Remarks

The Advisory Action mailed on August 20, 2010 has been reviewed carefully and the application amended in a sincere effort to place the application in condition for allowance. Accordingly, reconsideration of the claims, and allowance of the same, are respectfully requested on the basis of the following remarks.

Upon entry of this Amendment, Claims 1-4, 9, 11, 18-19, 22-24, 26, 28, 30-31, and 35-42 will be pending in the application. Claims 5-8, 10, 12-17, 20-21, 25, 27, 29, 32-33, and 34 have been cancelled. New Claims 38, 40, and 42 are based on Claim 33 as previously presented and which was inadvertently deleted in the last response.

Applicants have also amended Claims 1, 28, and 30 in addition to adding Claims 37, 39, and 41 to further define the blowing agent. Support for the amendments as well as the new claims can be found on page 6, line 19; page 6, line 29, to page 7, line 18; and page 7, lines 9-19. On those pages, the blowing agent is described as a hydrocarbon and the specific examples listed on those pages are all hydrocarbons that consist only of carbon and hydrogen atoms (e.g., n-butane). Additionally, the use of water as a blowing agent is described in the specification as well. Because there is support for the amendments made to Claims 1, 28, and 30 as well as new Claims 37, 39, and 41 in the specification as filed, no new matter is presented.

Claims 1, 28, and 30 have been amended to remove the language reciting the flame spread values which were rejected by the Examiner under 35 U.S.C. 112.

Rejections from Final Office Action dated August 20, 2010

All of the Applicants responses set forth in the Response October 15, 2010, which were directed to the rejections found in the Final Office Action of August 20, 2010, are incorporated in their entirety herein by reference.

Response to the Advisory Action

Note 3:

In Note 3 of the Advisory Action, the Examiner has indicated that Applicant's use of the phrase "consisting of" in proposed Claims 1, 28, and 30 (as set forth in the Response dated October 15, 2010) is "confusing" and "ambiguous" since the Examiner could not discern whether the "consisting of" feature applied to the entire blowing agent or just the blowing agent component recited in the claims.

Claims 1, 28, and 30 have been amended to further clarify the blowing agent. With regard to the use of "consisting of", the Applicants submit that the amendments made to these claims have now clarified the issues that were raised by the Examiner.

Note 11:

While the present invention has a filing date before the publication date of Sieker, Sieker still qualifies as prior art due to the fact that it has a filing date that pre-dates the current invention (see, generally, 35 U.S.C. 102(e)). However, as the Examiner is well aware, 35 U.S.C. 103(c) precludes a reference from being used against a later invention under 35 U.S.C. 103(a) if, at the time the later invention was made, the reference was also owned or subject to assignment to the owner of the later invention. Additionally, as the Examiner is well aware, having the same inventive entity is not a pre-requisite in order for a reference to fall under the protections afforded by 35 U.S.C. 103(c). All the Applicants have to show in order to obtain this protection is that, at the time the later invention was made, both the invention and the reference were commonly owned by the same entity or person.

In the last response, the Applicants submitted numerous documents to show that, at the time the present invention was made, Sieker and the present invention were commonly owned. While Deutsche Bank Trust Company Americas is listed as an "Assignee" on not only the present invention, but Sieker as well, the Examiner's attention is drawn to the fact that the interest that was conveyed from Huntsman International to Deutsche Bank in each of these cases was a "security interest" not an "assignment of assignors interest" (see Exhibits A and C which were attached in the previous response). In other words, Huntsman International is the rightful owner of both of these patents until the time when Deutsche Bank has standing (e.g., Huntsman defaults on its loan) to exercise its rights. Again, until that time, Huntsman International is the rightful owner of these inventions.

However, in response to these documents, the Examiner has made a blanket statement indicating that the evidence that was submitted was "not sufficient in establishing the fact" of common ownership. The Examiner has provided the Applicants with absolutely no further indication or guidance as to why, in his opinion, the documents that were provided by the Applicants did not prove common ownership between the present invention and Sieker. Applicants have attempted to facilitate prosecution of this case yet is offered no guidance by the Examiner as to why common ownership between

Sieker and the present invention has not been established by the various documents filed with the patent office. Accordingly, the Applicants request that Examiner expand on his rationale as to why the submitted documents do not prove common ownership between the present invention and Sieker.

Conclusion

In light of the foregoing arguments as well as the Response filed on October 15, 2010, it is respectfully submitted that Claims 1-4, 9, 11, 18-19, 22-24, 26, 28, 30-31, and 35-42 are in proper form for issuance of a Notice of Allowance and such action is respectfully requested at an early date.

Respectfully Submitted,

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